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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARTIN MACK BASHINSKI JR.,
Plaintiff,
v.
THE UNITED STATES OF AMERICA,
Defendant.

Case No.: 23-cv-01026-JO-JLB

**ORDER GRANTING IN PART
PLAINTIFF’S EX PARTE MOTION
AND AMENDING SCHEDULING
ORDER**

[ECF No. 31]

Before the Court is the *ex parte* motion to modify the Scheduling Order filed by Plaintiff Martin Mack Bashinski Jr. (“Plaintiff”) (ECF No. 31), and the response filed by Defendant United States of America (“Defendant”) (ECF No. 34).¹ For the reasons set forth herein, the Court **GRANTS in part** Plaintiff’s motion (ECF No. 31) and **AMENDS** the Scheduling Order (ECF No. 14).

¹ Plaintiff entitled his filing “Plaintiff’s Motion to Object to Rule 35 Mental Examination.” (ECF No. 31.) Based on content and context, the Court construed the filing as both a motion to amend the Scheduling Order and Plaintiff’s opposition to Defendant’s motion to compel (ECF No. 30). The Court issued a briefing schedule, ordering Defendant to file a response to Plaintiff’s motion by January 30, 2024 (ECF No. 33), which Defendant did (ECF No. 34).

1 **A. Plaintiff’s Motion to Amend**

2 In his motion, Plaintiff seeks a four-month extension to all remaining dates in the
3 Scheduling Order (ECF No. 14), because he has focused his efforts since October on
4 responding to discovery motions filed by Defendant. (ECF No. 31 ¶ 9.) In response,
5 Defendant provides that it does not oppose the motion considering “that Plaintiff is
6 unfamiliar with the timeline of litigation due to his *pro se* status.” (ECF No. 34 at 2.)
7 However, in the interests of efficiency and a timely resolution, Defendant proposes a sixty-
8 day extension instead. (*Id.*)

9 Although the Court acknowledges that Plaintiff is proceeding *pro se*, the instant
10 motion does not provide a fulsome explanation of Plaintiff’s due diligence. *See* Fed. R.
11 Civ. P. 16(b)(4) (“A schedule may be modified only for good cause and with the judge’s
12 consent.”); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)
13 (“Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking
14 the amendment. . . . If that party was not diligent, the inquiry should end.”). The case has
15 been pending since June 2, 2023, and the Scheduling Order was issued September 8, 2023.
16 (*See* ECF Nos. 1; 14.) Plaintiff does not explain why he could not have identified an expert
17 in the eight months since the case was filed, even if some of his time over the past four
18 months has been devoted to discovery disputes with Defendant. Neither does he explain
19 why he needs nearly five-and-a-half months from now to identify an expert and obtain a
20 report.

21 Despite these deficiencies in Plaintiff’s motion, considering Plaintiff is proceeding
22 *pro se* and Defendant does not oppose the instant motion, the Court finds good cause to
23 **GRANT in part** Plaintiff’s motion (ECF No. 31).

24 **B. Amended Scheduling Order**

25 Good cause appearing to continue all remaining dates by sixty-days, the Scheduling
26 Order (ECF No. 14) is hereby **AMENDED** as follows:

27 1. All fact discovery shall be completed by all parties by **July 8, 2024**.
28 “Completed” means that all discovery under Rules 30-36 of the Federal Rules of Civil

1 Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of
2 time in advance of the cut-off date, **so that it may be completed** by the cut-off date, taking
3 into account the times for service, notice and response as set forth in the Federal Rules of
4 Civil Procedure. **Counsel shall promptly and in good faith meet and confer with**
5 **regard to all discovery disputes in compliance with Local Rule 26.1(a).** The Court
6 expects counsel to make every effort to resolve all disputes without court intervention
7 through the meet and confer process. Discovery disputes must be brought to the Court's
8 attention in the time and manner required by § V of Judge Burkhardt's Civil Chambers
9 Rules. **All discovery disputes must be raised within 30 calendar days of the service of**
10 **an objection, answer, or response** that becomes the subject of dispute, or the passage of
11 a discovery due date without response or production, and only after counsel (and any
12 unrepresented parties) have met and conferred to resolve the dispute. *See* J. Burkhardt Civ.
13 Chambers R. § V. **A failure to comply in this regard will result in a waiver of a party's**
14 **discovery issue. Absent an order of the court, no stipulation continuing or altering**
15 **this requirement will be recognized by the court.**

16 2. The parties shall designate their respective experts in writing by
17 **May 13, 2024**. The parties must identify any person who may be used at trial to present
18 evidence pursuant to Rules 702, 703 or 705 of the Fed. R. Evid. This requirement is not
19 limited to retained experts. The date for exchange of rebuttal experts shall be by
20 **June 10, 2024**. The written designations shall include the name, address and telephone
21 number of the expert and a reasonable summary of the testimony the expert is expected to
22 provide. The list shall also include the normal rates the expert charges for deposition and
23 trial testimony.

24 3. By **May 13, 2024**, each party shall comply with the disclosure provisions in
25 Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This disclosure
26 requirement applies to all persons retained or specially employed to provide expert
27 testimony, or whose duties as an employee of the party regularly involve the giving of
28 expert testimony. **Except as provided in the paragraph below, any party that fails to**

1 **make these disclosures shall not, absent substantial justification, be permitted to use**
2 **evidence or testimony not disclosed at any hearing or at the time of trial. In addition,**
3 **the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

4 4. Any party shall supplement its disclosure regarding contradictory or rebuttal
5 evidence under Fed. R. Civ. P. 26(a)(2)(D) by **June 10, 2024**.

6 5. All expert discovery shall be completed by all parties by **July 8, 2024**. The
7 parties shall comply with the same procedures set forth in the paragraph governing fact
8 discovery.

9 6. Failure to comply with this section or any other discovery order of the court
10 may result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on
11 the introduction of experts or other designated matters in evidence.

12 7. All other pretrial motions must be filed by **August 5, 2024**. Counsel for the
13 moving party must obtain a motion hearing date from the law clerk of the judge who will
14 hear the motion. The period of time between the date you request a motion date and the
15 hearing date may vary from one district judge to another. Please plan accordingly. Failure
16 to make a timely request for a motion date may result in the motion not being heard.
17 Motions in limine are to be filed as directed in the Local Rules, or as otherwise set by the
18 district judge.

19 8. A Mandatory Settlement Conference (“MSC”) will be held by video
20 conference² on **July 30, 2024** at **1:45 PM** before **Magistrate Judge Jill L. Burkhardt**.
21 **Mandatory directions for participating in the MSC by video conference are attached**
22 **hereto**. The purpose of the MSC is to permit an informal, candid discussion between the
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24 ² If any party believes the MSC is more likely to be successful if conducted in-person,
25 that party shall meet and confer on the issue with the other parties. After meeting and
26 conferring, and no later than **60 days before the MSC**, the parties shall leave a joint
27 voicemail with chambers at (619) 557-6624 indicating which of the parties requests an in-
28 person MSC. In the voicemail, the parties shall leave three mutually available dates for a
telephonic status conference to discuss whether the MSC should be held in-person. The
final decision will be made by the Court.

1 attorneys, parties, and the settlement judge of every aspect of the lawsuit in an effort to
2 achieve a mediated resolution of the case. All MSC discussions will be off the record,
3 privileged, and confidential. See CivLR 16.3(h).

4 Pursuant to Civil Local Rule 16.3, all party representatives and claims adjusters for
5 insured defendants with full and unlimited authority³ to negotiate and enter into a binding
6 settlement, as well as the principal attorney(s) responsible for the litigation, must be present
7 and legally and factually prepared to discuss and resolve the case at the MSC. In the case
8 of an entity, an authorized representative of the entity who is not retained outside counsel
9 must be present and must have discretionary authority to commit the entity to pay an
10 amount up to the amount of the Plaintiff’s prayer (excluding punitive damages prayers).
11 The purpose of this requirement is to have representatives present who can settle the case
12 during the course of the conference without consulting a superior.

13 **Counsel for a United States government entity** may be excused from this
14 requirement so long as the government attorney who attends the MSC conference (1) has
15 primary responsibility for handling the case, and (2) may negotiate settlement offers which
16 the attorney is willing to recommend to the government official having ultimate settlement
17 authority.

18 **Failure to attend the MSC or obtain proper excuse will be considered grounds**
19 **for sanctions.**

20 9. No later than **21 days before the MSC**, the parties shall exchange formal
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23 ³ “Full authority to settle” means that the individuals at the settlement conference must
24 be authorized to fully explore settlement options and to agree at that time to any settlement
25 terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d
26 648 (7th Cir. 1989). The person needs to have “unfettered discretion and authority” to
27 change the settlement position of a party. *Pitman v. Brinker Int’l, Inc.*, 216 F.R.D. 481,
28 485–86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement
authority to attend the conference includes that the person’s view of the case may be altered
during the face-to-face conference. *Id.* at 486. A limited or a sum certain of authority is
not adequate. *Nick v. Morgan’s Foods, Inc.*, 270 F.3d 590, 595–97 (8th Cir. 2001).

1 settlement proposals, as required by § III.A. of Judge Burkhardt’s Civil Chambers Rules.
2 No later than **14 days before the MSC**, the parties shall meet and confer in person or
3 telephonically, as required by § III.B. of Judge Burkhardt’s Civil Chambers Rules.

4 10. No later than **July 22, 2024**, counsel (and any unrepresented parties) shall
5 **lodge** confidential MSC statements with Judge Burkhardt’s chambers via e-mail at
6 efile_Burkhardt@casd.uscourts.gov. The parties’ MSC statements shall comply with §
7 III.C. of Judge Burkhardt’s Civil Chambers Rules.

8 11. If the trial will be a bench trial, Counsel shall file their Memoranda of
9 Contentions of Fact and Law and take any other action required by Local Rule 16.1(f)(2)
10 by **November 13, 2024**. Counsel do not need to file Memoranda of Contentions of Fact
11 and Law if the trial will be a jury trial.

12 12. Counsel shall comply with the pre-trial disclosure requirements of Fed. R.
13 Civ. P. 26(a)(3) by **November 13, 2024**. Failure to comply with these disclosure
14 requirements could result in evidence preclusion or other sanctions under Fed. R. Civ.
15 P. 37.

16 13. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) by
17 **November 20, 2024**. At this meeting, counsel shall discuss and attempt to enter into
18 stipulations and agreements resulting in simplification of the triable issues. Counsel shall
19 exchange copies and/or display all exhibits other than those to be used for impeachment.
20 The exhibits shall be prepared in accordance with Local Rule 16.1(f)(4)(c). Counsel shall
21 note any objections they have to any other parties’ Pretrial Disclosures under Fed. R. Civ.
22 P. 26(a)(3). Counsel shall cooperate in the preparation of the proposed pretrial conference
23 order.

24 14. Counsel for Plaintiff will be responsible for preparing the pretrial order and
25 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By
26 **November 27, 2024**, Plaintiff’s counsel must provide opposing counsel with the proposed
27 pretrial order for review and approval. Opposing counsel must communicate promptly
28 with Plaintiff’s attorney concerning any objections to form or content of the pretrial order,

1 and both parties shall attempt promptly to resolve their differences, if any, concerning the
2 order.

3 15. The Proposed Final Pretrial Conference Order, including objections to any
4 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and
5 lodged with the assigned district judge by **December 4, 2024**, and shall be in the form
6 prescribed in and comply with Local Rule 16.1(f)(6).

7 16. The final Pretrial Conference is scheduled on the calendar of the
8 **Honorable Jinsook Ohta on December 11, 2024 at 8:30 AM.**

9 17. The parties must review the chambers' rules for the assigned magistrate judge.

10 18. A post trial settlement conference before a magistrate judge may be held
11 within 30 days of verdict in the case.

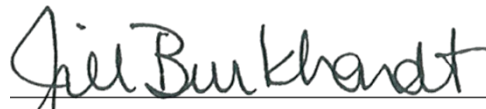
12 19. The dates and times set forth herein will not be modified except for good cause
13 shown.

14 20. Briefs or memoranda in support of or in opposition to any pending motion
15 shall not exceed twenty-five (25) pages in length without leave of a district court judge.
16 No reply memorandum shall exceed ten (10) pages without leave of a district court judge.
17 Briefs and memoranda exceeding ten (10) pages in length shall have a table of contents
18 and a table of authorities cited.

19 21. Plaintiff's counsel shall serve a copy of this order on all parties that enter this
20 case hereafter.

21 **IT IS SO ORDERED.**

22 Dated: February 2, 2024

23 
24 Hon. Jill L. Burkhardt
25 United States Magistrate Judge
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1 **Mandatory Directions for Zoom Video Conference Participation**

2 1. The Court will use its official ZoomGov video conferencing account to hold
3 the MSC. **IF YOU ARE UNFAMILIAR WITH ZOOM:** Zoom is available on
4 computers through a download on the Zoom website (<https://zoom.us/meetings>) or on
5 mobile devices through the installation of a free app.⁴ Joining a Zoom conference does not
6 require creating a Zoom account, but it does require downloading the .exe file (if using a
7 computer) or the app (if using a mobile device). Participants are encouraged to create an
8 account, install Zoom and familiarize themselves with Zoom in advance of the MSC.⁵
9 There is a cost-free option for creating a Zoom account.

10 2. Prior to the start of the MSC, the Court will e-mail each MSC participant an
11 invitation to join a Zoom video conference. Again, if possible, participants are encouraged
12 to use laptops or desktop computers for the video conference, as mobile devices often offer
13 inferior performance. Because Zoom may quickly deplete the battery of a participant’s
14 device, each participant should ensure that her or his device is plugged in or that a charging
15 cable is readily available during the video conference. Participants shall join the video
16 conference by following the ZoomGov Meeting hyperlink in the invitation. **Participants**
17 **who do not have Zoom already installed on their device when they click on the**
18 **ZoomGov Meeting hyperlink will be prompted to download and install Zoom before**
19 **proceeding.** Zoom may then prompt participants to enter the password included in the
20 invitation. All participants will be placed in a waiting room until the MSC begins.

21 3. Each participant should plan to join the Zoom video conference **at least**
22 **5 minutes** before the start of the MSC to ensure that the MSC begins on time.

23 4. Zoom’s functionalities will allow the Court to conduct the MSC as it
24 ordinarily would conduct an in-person MSC. That is, the Court will begin the MSC with
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26 ⁴ If possible, participants are encouraged to use laptops or desktop computers for the
27 video conference, as mobile devices often offer inferior performance.

28 ⁵ For help getting started with Zoom, visit: <https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started>

1 all participants joined together in a main session. After an initial discussion in the main
2 session, the Court will divide participants into separate, confidential sessions, which Zoom
3 calls Breakout Rooms.⁶ In a Breakout Room, the Court will be able to communicate with
4 participants from a single party in confidence. Breakout Rooms will also allow parties and
5 counsel to communicate confidentially without the Court.

6 5. As previously stated, MSCs are confidential court proceedings. All attendees
7 must participate from a private and stable location where no individual who is not a party,
8 a party representative, or an attorney for a party can overhear the proceedings. All
9 attendees must be prepared to devote their full attention to the MSC as if they were
10 attending in person. This means that attendees must clear their schedules of all conflicts
11 for the entire period of the MSC.⁷ Attendees may not participate from a moving car or a
12 public space.

13 6. All participants are expected to display the same level of professionalism and
14 civility as they would at an in-person court proceeding. *See* CivLR 2.1; J. Burkhardt’s Civ.
15 Chambers R. § I.

27 ⁶ For more information on what to expect when participating in a Zoom Breakout
28 Room, visit: <https://support.zoom.us/hc/en-us/articles/115005769646>

⁷ MSCs are ordinarily scheduled for three hours but may last considerably longer.